

**ORDINANCE TO AMEND THE CODE OF THE CITY OF BURLINGTON
TO CREATE CHILD SAFETY ZONES AND RESIDENTIAL RESTRICTIONS
APPLICABLE TO SEX OFFENDERS AND TO PROVIDE FOR ENFORCEMENT**

The City Common Council of the City of Burlington, Wisconsin, do ordain as follows:

Section 1. That Chapter 240 of the Code of the City of Burlington is hereby created as follows:

Chapter 240

SEX OFFENDER RESTRICTIONS

§ 240-1. Purpose and Intent.

- A. The City finds and declares that Child Sex Offenders (as hereinafter defined) are a serious threat to public safety. Given the high rate of recidivism, reducing opportunity and temptation is important to minimizing the risk of re-offense, and there is a need to protect children where they congregate or play in public places in addition to the protections afforded by state law near schools and daycare centers. The City finds and declares that, in addition to schools and daycare centers, children congregate or play in a number of public places, including parks and other facilities.
- B. This Chapter is a regulatory measure aimed at protecting the health and safety of children in the City of Burlington from the risk that Child Sex Offenders may re-offend where children congregate. It is the intent of this Chapter to serve the City's compelling interest to promote, protect, and improve the health, safety, and welfare of the citizens of the City by creating Child Safety Zones as areas where children regularly congregate, and that restrict Child Sex Offenders residing in, entering, or loitering in Child Safety Zones.

§ 240-2. Definitions.

As used in this Chapter, the following words, terms, and phrases shall have the meanings ascribed to them.

- A. **Child(ren)** means a person(s) under the age of eighteen (18) years of age.

- B. **Child Safety Zone** is the building, facilities and improvements, and the legal parcel of real property on which they are situated, to the extent the property is within the City, that are used for or which supports a use set forth below.
- (1) A public park (inclusive of any swimming or aquatic facility within), playground, parkway, parkland, athletic field, recreational trail, or park facility;
 - (2) Any site, facility, or premise operated by the Boy Scouts of America, the Girl Scouts of America, or any similar organization of which a Child is or may be a member;
 - (3) Public or private schools for Children;
 - (4) Daycare centers;
 - (5) Any specialized school or facility for Children, including but not limited to, gymnastics schools, dance academies, and music academies;
 - (6) The Chocolate Fest grounds during any period of time in which a festival or other public entertainment is in progress, and at which Children are present;
 - (7) Any other facility for Children, including any public or private school or group home within the meaning of Section 48.02(7), Wis. Stats., residential care centers for children and youth within the meaning of Section 48.02(15d), Wis. Stats., a shelter care facility within the meaning of Section 48.02(17), Wis. Stats., a foster home within the meaning of Section 48.02(6), Wis. Stats., a treatment foster home within the meaning of Section 48.02(17q), Wis. Stats., daycare centers licensed under Section 48.65, Wis. Stats., daycare programs established under Section 120.13(14), Wis. Stats., daycare providers certified under Section 48.651, Wis. Stats., or a youth center as defined in Section 961.01(22), Wis. Stats.

The City shall maintain an official map showing Child Safety Zones. The City will update the map at least annually to reflect any changes in the locations of Child Safety Zones. The map shall be available at the City Hall, at the City of Burlington Police Department, and on the City's official website. In the event of any conflict between the map and this Ordinance, the Ordinance shall control.

- C. **Loiter** for purposes of this Ordinance shall have the same meaning as set forth in § 204-1 of the City of Burlington Ordinances, and as may be amended or renumbered from time to time.
- D. **Residence** means any place where a person, either temporarily or permanently, lodges, abides, or resides.
- E. **Child Sex Offender** means: (a) a person required to register under Section 301.45, Wis. Stats., if the Sex Offense which requires registration involved a Child; or (b) a person that has been convicted of, or has been found delinquent for, or has been found not guilty by reason of disease or mental defect, of a Sexually Violent Offense, regardless of the age of the victim.
- F. **Sex Offense** is an offense defined as a ~~sex~~ offense by Section 340.45(b), Wis. Stats.
- G. **Sexually Violent Offense** is an offense defined as a ~~sexually violent offense~~ by Section 980.01(6), Wis. Stats.
- H. **Wisconsin Statutes.** All references to the Wisconsin Statute(s) in this Ordinance shall mean the statute(s) as in effect when this Ordinance is adopted, and shall include any amendment to or renumbering of the statute(s) after the adoption of this Ordinance.

§ 240-3. Prohibited Acts.

- A. **Residence in a Child Safety Zone.** No Child Sex Offender shall establish a permanent or temporary residence in a Child Safety Zone. A Sex Offender

does not commit a violation of this provision if any of the following apply.

- (1) The Child Sex Offender established and was required to and did register the residence pursuant to Section 301.45, Wis. Stats. before the effective date of this Ordinance.
- (2) The Child Safety Zone was established after the Sex Offender established and was required to and did register the residence pursuant to Section 301.45, Wis. Stats.

In the event a Child Sex Offender lawfully has his/her residence in a Child Safety Zone under the provisions of above subparagraph (1) or (2) of this subsection 204-3(A), then the Child Sex Offender (i) may go to and from the residence, and (ii) occupy the residence, but (iii) shall not enter any other part of the property (on which the residence is located) that supports the use which creates a Child Safety Zone unless otherwise permitted by this Ordinance.

B. Entry Into a Child Safety Zone. No Child Sex Offender shall:

- (1) Enter or be present in any Child Safety Zone that is a public playground, a school or specialized school for children, a daycare center, or any facility for children as defined in Section 240-2, B, (7) of this Ordinance;
- (2) Enter or be present in any other Child Safety Zone between the hours of 7:00 a.m. and 11:00 p.m., or at any time when a Child is present;
- (3) Loiter in or within the surrounding Three Hundred (300) feet of any Child Safety Zone. For purposes of determining the surrounding Three Hundred (300) feet of a Child Safety Zone, the area shall be determined by measuring 300 feet following a straight line perpendicular to the outer property line of each such Child Safety

Zone. In the event a Child Sex Offender has a residence within 300 feet of a Child Safety Zone, the Child Sex Offender may (i) go to and from the residence, and (ii) occupy the residence and the parcel of land on which the residence is located, without violating the foregoing provisions prohibiting loitering in or within a Child Safety Zone. Except for such ingress/egress to and from the said residence and/or occupancy of the residence/parcel of land, however, the Child Sex Offender shall not otherwise loiter in or within 300 feet of the said Child Safety Zone.

- (4) A Child Sex Offender does not violate this provision if any of the following apply:
- a. The Child Safety Zone supports a church, synagogue, mosque, temple, or other house of religious worship and entry and presence in the Child Safety Zone occurs for the limited and sole purpose of attending or visiting the said religious facility. In such event, however, the Child Sex Offender may not enter into and/or loiter in or around any other area of the Child Safety Zone in which the said religious facility is located. This shall expressly include, but not be limited to, any children's school and/or children's playground located in the Child Safety Zone.
 - b. The Child Safety Zone supports a use lawfully attended by the Child Sex Offender's natural or adopted Child or ward, and which Child or ward's use or attendance reasonably requires the attendance of the Child Sex Offender as parent or guardian; further provided the Child Sex Offender must provide written notice to and obtain written

approval from the person in charge of the facility in the Child Safety Zone to attend the event with his Child or ward and the written approval must be specific as to days, dates, and times when the event will be conducted;

- c. The Child Safety Zone supports a polling location in a local, state, or federal election; further provided, the Child Sex Offender must be eligible to vote in the election, the Child Sex Offender must enter the polling place, proceed to cast a ballot with whatever usual and customary assistance is provided to any other member of the electorate, and vacates the Child Safety Zone immediately after voting.
- d. The property supports a government, commercial, retail, or business use open to the public, or a health care or professional service facility in addition to the use which creates a Child Safety Zone; further provided the Child Sex Offender: (a) is on the property for purposes of using the government, commercial, retail, or business use, or the health care or professional service facility on the property; and (b) the Child Sex Offender may not loiter in any common area; and (c) the Child Sex Offender may not enter any area that supports a use which creates a Child Safety Zone unless otherwise permitted by this Ordinance.
- e. It is not a violation of this provision for a Child Sex Offender to travel on a public sidewalk, roadway, or highway that adjoins or is adjacent to a Child Safety Zone; further provided: (a) a Child Sex Offender may not loiter on the sidewalk,

roadway, or highway that adjoins or is adjacent to a Child Safety Zone; and (b) a Child Sex Offender may not travel on any portion of any sidewalk, roadway, or highway that lies entirely within a Child Safety Zone unless otherwise permitted by this Ordinance.

- f. It is not a violation of this provision if the Child Sex Offender is present in or upon a Child Safety Zone (i) for purposes of exercising First Amendment Rights protected by the United States Constitution, including the freedom of speech, free exercise of religion, and the right of assembly, and/or (ii) as otherwise permitted by this Ordinance.

C. **Holiday Prohibition.** No Child Sex Offender may participate in any holiday event involving Children such as distributing candy or other items as part of a Halloween event, wearing a Santa Claus or other costume as part of a Christmas holiday event, or wearing an Easter Bunny or other costume as part of an Easter holiday event. This present Holiday Prohibition shall not apply, however, to (i) holiday events in which the Child Sex Offender is the parent or guardian of one or more Children involved, and there are no non-familial Children present, and/or (ii) the event is sponsored by or held at a religious facility as defined and described in above Section (4)(a).

D. **Enforcement and Duty to Inquire.** Unless flight by the Child Sex Offender or other circumstances make it impractical, a law enforcement officer shall, prior to any arrest for a violation of § 240-3, B, afford the Child Sex Offender an opportunity to dispel any alarm which would otherwise be warranted, by requesting the Child Sex Offender to identify himself or herself and explain his or her presence and/or conduct in the Child Safety Zone. No person shall be convicted of an offense under this provision if the law enforcement officer did not make a good faith effort to comply with the preceding sentence, or if at trial, the explanation

given by the Child Sex Offender is true, and if it had been believed by the law enforcement officer, would have reasonably dispelled alarm.

§ 240-4. Violations and Penalties.

If a Child Sex Offender violates the provisions of this Chapter, such Offender shall be subject to the general penalty provisions set forth under Chapter 1, s. 1-4 of this Municipal Code (and/or as the same may be amended or renumbered in the future). Each day a violation continues shall constitute a separate offense. In addition, the City may undertake all other legal and equitable remedies available (including, but not limited to, obtaining injunctive relief and/or a restraining order against a Child Sex Offender).

§ 240-5. Severability.

If any provision of this Ordinance is found invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the other provisions of this Ordinance.

Section 2. The above Offenses shall be added to the City of Burlington Municipal Deposit Schedule, which shall show base deposit amounts for the offenses as follows:

| | | |
|-----------|--|----------|
| 240-3 A-C | Violation of Prohibited Acts Provision (First Offense) | \$250.00 |
| 240-3 A-C | Violation of Prohibited Acts Provision (Second Offense) | \$500.00 |

Section 3. The Common Council of the City of Burlington proceeded to adopt this proposed addition to the Code of the City of Burlington at its meeting held on June 21, 2011.

Section 4. This ordinance shall take effect and be in full force after its passage and publication as required by law.

Introduced: January 4, 2011
Adopted: June 21, 2011

Robert Miller, Mayor

Attest:

Beverly R. Gill, City Clerk